82 N. E. 1101; *Reining* v. *City of Buffalo,* 102 N. Y. 308, 6 N. E. 792; *Porter* v. *Kingsbury,* 71 N. Y. 588; *Carson* v. *Village of Dresden,* 202 N. Y. 414, 95 N. E. 803; *Postel* v. *Seattle,* 41 Wash. 432, 83 Pac. 1025; *Schmidt* v. *City of Fremont,* 70 Neb. 577, 97 N. W. 830; *City of Ft. Worth* v. *Shero,* 16 Tex. Civ. App. 487, 41 S. W. 704; *Trost* v. *City of Casselton,* 8 N. D. 534, 79 N. W. 1071. It is true that where the plaintiff is mentally or physically disabled to such a degree as to render him unable to file the notice within the time prescribed, he will be excused for his failure to do so. *Webster* v. *Beaver Dam,* 84 Fed. 280; *Barclay* v. *Boston,* 167 Mass. 596, 46 N. E. 113. But mere personal disability, though it renders plaintiff helpless, will not of itself, as a recent North Carolina case points out, relieve plaintiff of the duty of giving notice, where it is possible for him to utilize his friends for the purpose of notifying the city. *Hartsell* v. *City of Ashville,* (N. C. 1913), 80 S. E. 226. It is difficult to reconcile the decision of the principal case with the proposition laid down in *Winter* v. *Niagara Falls,* supra. It was there held that the provision of a charter with regard to the time for presenting a claim against a city was not a statute of limitation, the running of which would suspend during infancy; that such a provision did not relate to the commencement of an action, but was a bar to an action against the city. One of the judges in the principal case, referring to the *Niagara Falls* case, called attention "to the fact that plaintiff in that case was 18 years of age 'and so far as the complaint shows, presumably able to cause a claim to be filed.'" If this was intended as a distinction, it is submitted that the distinction is groundless. First, because there are no degrees of infancy; and secondly, because it appears from the facts of the principal case that the mother of plaintiff had been zealously protecting plaintiff's rights, a suit prior to this action having been prosecuted against a railroad company for the same injury, and that plaintiff might easily have filed the claim. This last fact, within the principal of *Hartsell* v. *City of Asheville,* supra, would be sufficient to hold plaintiff to the general rule.

MUNICIPAL CORPORATIONS—RIGHT OF TAXPAYER TO SUE ON CONTRACT MADE BY CITY WITH WATER COMPANY.—Plaintiff, as citizen of Albuquerque, sued defendant water company for loss sustained by reason of defendant's failure to provide the sufficient water pressure called for by the contract between defendant and the city. *Held*: A taxpayer has no such direct interest in the contract as will allow him to sue *ex contractu* for breach, or *ex delicto* for violation of the public duty thereby assumed. *Braden* v. *Water Supply Co.,* (N. M. 1913), 135 Pac. 81.

This case, one of first impression in New Mexico, adds another state to the already formidable list of states that deny the right of the taxpayer to bring action under such circumstances. It appears that but three states, Kentucky, North Carolina, and Florida, allow a recovery. In *Paducah Lumber Co.* v. *Paducah Water Supply Co.,* 89 Ky. 340, 25 Am. St. Rep. 536, plaintiff was allowed to recover on the ground that the benficiary of a contract has the power to sue in his own right, though no privity exists between him and the defendant. In *Fisher* v. *Greensboro Water Supply Co.,* 128 N. C. 375,

38 S. E. 912, and in *Mugge* v. *Tampa Waterworks,* 52 Fla. 371, 6 L. R. A. (N. S.) 1171, recovery was had on the theory of tort. This last ground, while it offers escape from the privity necessary to a contract action, has not met with approval by the courts generally. The inequity of allowing the negligent public service company to go free from liability for its failure to render service for which it receives large compensation is noticed by the court in the principal case; but the remedy is to be obtained, the court says, not "by a violation of the long-established legal principles, or by remaking the contract between the parties," but by legislation "designed to protect the public against the reckless granting of one-sided franchises under which the public has but little recognition." A convenient summary of authorities on this much controverted question is afforded by the case of *Ancrum* v. *Camden Water, etc. Co.,* 82 S. C. 284, 21 L. R. A. (N. S.) 1029. This general subject has received exhaustive treatment in two articles found in earlier numbers of this Review: "The Liability of Water Companies for Fire Losses," by Edson R. Sunderland, 3 MICH. L. REV. 442; and "The Liability of Water Companies for Fire Losses—Another View," by Albert Martin Kales, 3 MICH. L. REV. 501.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE OF THIRD PARTY.—Plaintiff went for a pleasure ride with X in the latter's automobile, and as they drove across a street intersection the machine was struck by a street car operated by defendant's servants. The proof showed that defendant was negligent, and also that X, who was driving the machine, was contributorily negligent. Plaintiff was injured and brought suit. *Held* that the negligence of the driver could be imputed to plaintiff, and that it barred her recovery. *Colborne* v. *Detroit United Ry.,* (Mich. 1913) 143 N. W. 32.

The case is against the great weight of authority in this country. The doctrine that the negligence of a third party can be imputed to one injured in a case of this kind, was first laid down in the case of *Thorogood* v. *Bryan,* 8 C. B. 115, and was there based on the ground that the plaintiff had in some way identified himself with the third party, whose contributory negligence must be considered the plaintiff's own. This case was criticized in *The Milan,* Lush. 388, and was finally expressly overruled in *The Bernina,* L. R. 12 P. D. 58, so the doctrine is no longer law in England. The American States have almost universally rejected the doctrine, declaring *Thorogood* v. *Bryan* to be decided contrary to both reason and justice. *Hot Springs St. R. Co.* v. *Hildreth,* 72 Ark. 572; *Met. St. R. Co.* v. *Powell,* 89 Ga. 601; *W. St. L. & P. R. R. Co.* v. *Shacklet,* 105 Ill. 364; *Nisbet* v. *Garner,* 75 Iowa 314, 1 L. R. A. 752; *L. C. & L. R. R. Co.* v. *Case's Adm'r,* 9 Bush (Ky) 728; *State of Maine* v. *B. & M. R. Co.,* 80 Me. 430; *Randolph* v. *O'Riordan,* 155 Mass. 331; *Chadbourne* v. *Springfield St. Ry.,* 199 Mass. 574, 85 N. E. 737; *Follman* v. *Mankato,* 35 Minn. 522; *A. & V. Ry. Co.* v. *Davis,* 69 Miss. 444; *Bennett* v. *N. J. R. R. & T. Co.,* 36 N. J. L. 225; *Chapman* v. *New Haven R. Co.,* 19 N. Y. 341; *Farley* v. *W. & N. C. R. Co.,* 3 Pennewill (Del.) 581, 52 Atl. 543; *Carlisle* v. *Brisbane,* 113 Pa. 544; *G. H. & S. A. Ry. Co.* v. *Kutac,* 72 Tex. 643; *Little* v. *Hackett,* 116 U. S. 366. The rule is different where both the